

ESTTA Tracking number: **ESTTA488061**

Filing date: **08/08/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	HEB Grocery Company, LP		
Entity	Partnership	Citizenship	Texas
Composed Of:	HEBCO GP, L.L.C., Texas Limited Liability Company		
Address	646 South Main Street San Antonio, TX 78204 UNITED STATES		

Attorney information	Tyson Smith Pirkey Barber PLLC 600 Congress Avenue Suite 2120 Austin, TX 78701 UNITED STATES lpirkey@pirkeybarber.com, tsmith@pirkeybarber.com, tmcentral@pirkeybarber.com, drausa@pirkeybarber.com Phone:512-322-5200
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Applicant Information

Application No	85548658	Publication date	07/10/2012
Opposition Filing Date	08/08/2012	Opposition Period Ends	08/09/2012
Applicant	COLOR JEWELS INC 36 WEST 44 STREET, SUITE 900 New York, NY 10036 UNITED STATES		

Goods/Services Affected by Opposition


Class 014. First Use: 2011/01/09 First Use In Commerce: 2011/01/09
All goods and services in the class are opposed, namely: Gemstone jewelry; Jewelry


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3595320	Application Date	12/01/2006
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GTC		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 007. First use: First Use: 2008/07/31 First Use In Commerce: 2008/07/31 ELECTRIC MIXERS FOR HOUSEHOLD PURPOSES; COUNTERTOP MIXERS; ELECTRIC JUICE SQUEEZERS FOR FRUIT AND VEGETABLES FOR HOUSEHOLD USE; ELECTRIC BLENDERS FOR HOUSEHOLD USE


U.S. Registration No.	3701946	Application Date	12/01/2006
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2008/06/21 First Use In Commerce: 2008/06/21 CHARCOAL BRIQUETTES, MAINLY FOR USE IN CHARCOAL GRILLS		

U.S. Registration No.	3900870	Application Date	12/01/2006
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	GTC		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2003/06/30 First Use In Commerce: 2003/06/30 NOTEBOOKS; NOTEBOOK FILLER PAPER; WRITING INSTRUMENTS, namely, LEAD PENCILS, CRAYONS; ERASERS; BINDERS; WRITING PADS; ASSIGNMENT BOOKS; ADHESIVE TAPE FOR HOUSEHOLD OR STATIONERY USE; SELF-ADHESIVE NOTE PADS; BLANK, PARTIALLY PRINTED, OR PRINTED PAPER LABELS; ENVELOPES; RUBBER BANDS; STAPLE REMOVERS; INDEX CARDS; PENCIL SHARPENERS


U.S. Registration No.	3908259	Application Date	12/01/2006
Registration Date	01/18/2011	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 008. First use: First Use: 2009/02/07 First Use In Commerce: 2009/02/07 FLATWARE, NAMELY, KNIVES, SPOONS, FORKS; CUTLERY		


U.S. Registration No.	3923827	Application Date	08/06/2009
Registration Date	02/22/2011	Foreign Priority Date	NONE
Word Mark	GTC		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2002/05/31 First Use In Commerce: 2002/05/31 WASHING BRUSHES


U.S. Registration No.	3925794	Application Date	12/01/2006
Registration Date	03/01/2011	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2006/10/31 First Use In Commerce: 2006/10/31 ELECTRIC TOASTERS; ELECTRIC FOOD WARMERS; ELECTRIC SLOW COOKERS; TOASTER OVENS		


U.S. Registration No.	3944472	Application Date	12/01/2006
Registration Date	04/12/2011	Foreign Priority Date	NONE
Word Mark	GTC		

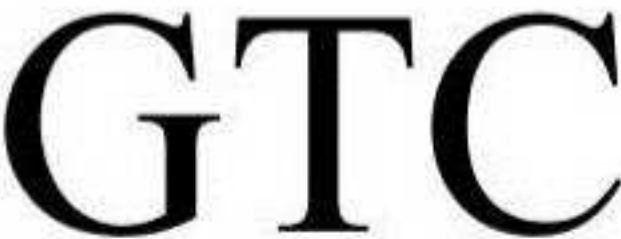
Design Mark	
Description of Mark	NONE
Goods/Services	Class 008. First use: First Use: 2008/07/31 First Use In Commerce: 2008/07/31 HAND-OPERATED CAN OPENERS Class 021. First use: First Use: 2003/07/31 First Use In Commerce: 2003/07/31 PORTABLE WATER CARRIERS; HAND-OPERATED COFFEE GRINDERS; COOKWARE, NAMELY, POTS AND PANS; DINNERWARE; BOWLS; KITCHEN UTENSILS, NAMELY, SPATULAS, LADLES; GRILLING UTENSILS, NAMELY, FORKS, SPATULAS, TONGS; SERVING WARE FOR SERVING FOOD

U.S. Registration No.	3966591	Application Date	07/25/2007
Registration Date	05/24/2011	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2009/09/30 First Use In Commerce: 2009/09/30 Cooking utensils, namely, forks, tongs, turners, skewer racks; scraping brushes		

U.S. Registration No.	4009921	Application Date	08/06/2009
Registration Date	08/09/2011	Foreign Priority Date	NONE
Word Mark	GTC		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2011/01/31 First Use In Commerce: 2011/01/31 POWER STEERING FLUID, BRAKE FLUID

U.S. Registration No.	4009922	Application Date	08/06/2009
Registration Date	08/09/2011	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2011/01/31 First Use In Commerce: 2001/01/31 MOTOR OIL, 2-CYCLE ENGINE OIL		

U.S. Registration No.	4161368	Application Date	11/09/2011
Registration Date	06/19/2012	Foreign Priority Date	NONE
Word Mark	GTC		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2008/06/30 First Use In Commerce: 2008/06/30 Light bulbs

U.S. Registration No.	4161445	Application Date	01/18/2012
Registration Date	06/19/2012	Foreign Priority Date	NONE

Word Mark	GTC
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2011/02/03 First Use In Commerce: 2011/02/03 Clothes pins

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/tds/
Name	Tyson Smith
Date	08/08/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Serial No. 85548658	§	
Filed: February 21, 2012	§	
Mark: GTC	§	
Published: July 10, 2012	§	
	§	
HEB Grocery Company, LP,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
Color Jewels Inc.,	§	
	§	
Applicant.	§	

NOTICE OF OPPOSITION

HEB Grocery Company, LP (“Opposer”), a Texas limited partnership with an address of 646 South Main Street, San Antonio, Texas 78204, believes that it would be damaged by registration of the mark GTC shown in Application Serial No. 85/548,658 and hereby opposes same. As grounds for opposition, Opposer states the following:

1. Opposer uses the mark GTC for a wide variety of products, including both registered and unregistered goods (the “GTC Mark”).

2. Opposer has continually used the GTC Mark since at least as early as May 31, 2002.

3. Opposer’s GTC Mark is inherently distinctive, serving to identify and indicate the source of Opposer’s goods to the consuming public, and to distinguish Opposer’s goods from those of others.

4. Additionally, as a result of Opposer’s extensive use and promotion of its GTC Mark, the mark has become distinctive and is recognized by consumers. Opposer has invested significant effort and resources in advertising and promoting its GTC Mark and the goods sold

under that mark, with the result that the purchasing public has come to know, rely on, and recognize the goods of Opposer by that mark. Opposer has established valuable goodwill in its GTC Mark.

5. Opposer's GTC Mark is famous pursuant to 15 U.S.C. § 1125(c).

6. In addition to its common-law rights in the GTC Mark, Opposer is the owner of numerous United States Trademark Registrations for the GTC Mark, including the following:

Mark	Reg. No.	Goods
GTC	3,595,320	Electric mixers for household purposes; countertop mixers; electric juice squeezers for fruit and vegetables for household use; electric blenders for household use, in International Class 7
GTC	3,701,946	Charcoal briquettes, mainly for use in charcoal grills, in International Class 4
GTC	3,900,870	Notebooks; notebook filler paper; writing instruments, namely, lead pencils, crayons; erasers; binders; writing pads; assignment books; adhesive tape for household or stationery use; self-adhesive note pads; blank, partially printed, or printed paper labels; envelopes; rubber bands; staple removers; index cards; pencil sharpeners, in International Class 16
GTC	3,908,259	Flatware, namely, knives, spoons, forks; cutlery, in International Class 8
GTC	3,923,827	Washing brushes, in International Class 21
GTC	3,925,794	Electric toasters; electric food warmers; electric slow cookers; toaster ovens, in International Class 11
GTC	3,944,472	Hand-operated can openers, in International Class 8 Portable water carriers; hand-operated coffee grinders; cookware, namely, pots and pans; dinnerware; bowls; kitchen utensils, namely, spatulas, ladles; grilling utensils, namely, forks, spatulas, tongs; serving ware for serving food, in International Class 21
GTC	3,966,591	Cooking utensils, namely, forks, tongs, turners, skewer racks; scraping brushes, in International Class 21
GTC	4,009,921	Power steering fluid, brake fluid, in International Class 1
GTC	4,009,922	Motor oil, 2-cycle engine oil, in International Class 4
GTC	4,161,368	Light bulbs, in International Class 11
GTC	4,161,445	Clothes pins, in International Class 21

7. Applicant Color Jewels Inc. (“Applicant”) filed Application Serial No. 85/548,658 on February 21, 2012 under § 1(a) of the Lanham Act seeking to register the mark GTC for “Gemstone jewelry; Jewelry,” in International Class 14 (the “Application”).

8. The Application was published in the *Official Gazette* on July 10, 2012.

9. Opposer has priority based on its prior use and registrations of its GTC Mark in the United States.

10. Opposer’s GTC Mark became famous prior to the date Applicant first used or applied to register the mark GTC.

11. Opposer has not given Applicant permission or approval to use or register the mark GTC.

12. Applicant’s mark GTC is confusingly similar to Opposer’s GTC Mark, and the goods in the Application that are the subject of this opposition are similar or related to the goods for which Opposer has used and registered its GTC Mark.

13. Applicant’s mark GTC so resembles Opposer’s GTC Mark as to be likely, when used on or in connection with the identified goods of Applicant, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Applicant intends to offer under its mark GTC are produced, sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer. Opposer would be damaged by registration of Applicant’s mark GTC, which should be refused under 15 U.S.C. §§ 1052(d) and 1063.

14. Applicant’s mark GTC is likely to cause dilution by blurring of Opposer’s famous GTC Mark, and registration should therefore be refused under 15 U.S.C. § 1125(c).

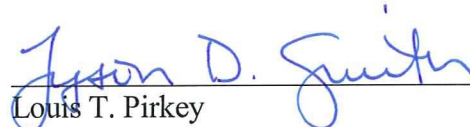
15. Registration of Applicant's mark GTC on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations and common law and would be damaging to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 85/548,658 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/HEBT170/LTP, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: August 8, 2012

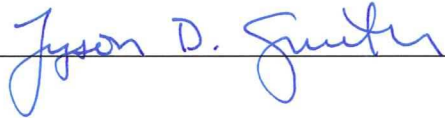

Louis T. Pirkey
Tyson D. Smith
PIRKEY BARBER PLLC
600 Congress Avenue, Suite 2120
Austin, Texas 78701
(512) 322-5200

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first-class mail on August 8, 2012 on Applicant:

Color Jewels Inc.
36 W. 44th Street, Suite 900
New York, NY 10036-8106

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